

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE HON'BLE MR JUSTICE M.H.S. ANSARI

and

THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 709 of 2005

Between:

M/s Ruchi Infrastructure Limited Beach Road, Kakinada, rep. by its Authorised
Signatory
Mr.P.V.S.R.G. Prasad.

..... PETITIONER

AND

The Commercial Tax Officer Kakinada Division, Kakinada.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Certiorari or any other appropriate writ or order or direction quashing the Form CST VII notice dt.12.1.2005 issued under the CST Act for the assessment year 2003-04 restricting the time for payment of Tax to 7 days without showing any reasons as contrary to Section 16 of the AOGST Act and restrain the Respondent from taking any coercive steps till 10.2.2005 in respect of disputed demand for the assessment year 2003-04 under CST Act pursuant to the order of the Respondent dt.12.1.2005 and subject to the appellate remedies provided under the AOGST Act and pass such other order or orders.

Counsel for the Petitioner:MR.S.DWARAKANATH

Counsel for the Respondent : GP FOR COMMERCIAL TAX

The Court made the following order at the stage of admission :

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ORAL ORDER: (PER MHSA.J)

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Having heard the learned counsel for the petitioner and also Special Standing Counsel for Commercial Taxes, we are of the view that the instant writ petition needs to be disposed of at this stage with certain appropriate directions. The reasons therefor shall be apparent from what is stated hereinafter.

Section 16 of the A.P.G.S.T. Act (for short 'the Act'), 1957, provides that the tax assessed provisionally or finally shall be paid by the dealer in such manner and within such time, not being less than 15 days from the date of service of notice of assessment as specified in the notice. The proviso thereto empowers the assessing authority for good and sufficient reasons to be recorded in writing that such tax assessed shall be paid within a period of not less than 7 days from the date of service of notice of assessment.

In the case on hand, the order of assessment-cum-demand notice (impugned order), the period of 7 days from the date of service of notice has been specified for payment of the tax assessed, failing which, it has been stated that the amount will be recovered as if it were an arrear of land revenue.

The demand notice is dated 12.1.2005 and has been served on the dealer on 20.1.2005 requiring the dealer to pay the tax on or before 27.1.2005 (within 7 days from the date of service of notice).

The demand notice does not contain any reasons, much less good or sufficient, as required under Section 16 of the Act, restricting the time for payment to 7 days.

We are, therefore, inclined to uphold the contention of the petitioner that restricting the time for payment of tax to 7 days without showing any reasons, is contrary to Section 16 of the Act. The time period for payment of tax under the Act is to be not less than 15 days from the date of service and, accordingly, the same would expire by 19.2.2005 reckoned from the date of service being 20.1.2005, and in the case of Central Sales Tax Act, the same would be up to 10.2.2005, within which period the dealer can pay the tax without being declared a defaulter.

We, accordingly, dispose of the instant writ petition directing that no coercive steps shall be taken for recovery of the tax, pursuant to the impugned notice of demand in the case of the APGST Act, until 19.2.2005 and in case of the CST Act, up to 10.2.2005. Thereafter, it shall be open to the respondent-authorities to recover the tax, in accordance with law, subject, however, to any orders passed by any appellate authority. There will be no order as to costs.

(M.H.S. ANSARI, J)

(T.CH. SURYA RAO, J)

Date: 25.1.2005

Note:

Furnish operative portion of the order

by wire at party's cost.

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CVM

To

- 1. The Commercial Tax Officer Kakinada Division, Kakinada.
 - 2. 2CCs to Special G.P. for Commercial Taxes, High Court Buildings, High Court of A.P., Hyderabad (OUT).
 - 3. 2CD copies
- (JUSTICE M.H.S. ANSARI)

(JUSTICE T.CH. SURYA RAO)

